

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matters of	)	
	)	
Local Number Portability Porting Interval and	)	WC Dkt. No. 07-244
Validation Requirements	)	
	)	CC Dkt. No. 95-116
Telephone Number Portability	)	
	)	

**REPLY COMMENTS OF CBeyond, INTEGRA,  
ONE COMMUNICATIONS AND TW TELECOM**

Willkie Farr & Gallagher LLP  
1875 K Street, N.W.  
Washington, D.C. 20006  
(202) 303-1000

ATTORNEYS FOR CBeyond, INC., INTEGRA  
TELECOM, INC., ONE COMMUNICATIONS  
CORP. AND TW TELECOM INC.

August 31, 2009

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY .....	1
II. THERE IS NO BASIS IN THE RECORD FOR ALTERING THE DEFINITION OF SIMPLE PORTS.....	3
A. Ports Involving “UNEs” .....	5
B. Ports Involving Complex Switch Translations .....	7
C. Single Line/Single Account .....	9
III. STANDARDIZATION OF PORTING FIELDS AND ORDERS .....	11
IV. ADDITIONAL ISSUES RAISED BY COMMENTERS.....	12
A. Use of Passcodes to Verify the Port.....	12
B. Deleting the Number from the Switch and Timing of the Port.....	13
C. CSR Timeframes.....	14
D. Delivering Firm Order Confirmations (“FOCs”).....	14
E. Shortening the Wireline Porting Period.....	14
F. Port Delays Due to Pending Orders .....	14
G. Porting After Disconnection .....	15
H. Authority of LNPA WG.....	15
I. Charging for Port-Outs .....	17
J. Requirement Need to Have an Interconnection or Other Agreement Prior to Porting.....	17
V. CONCLUSION.....	18

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matters of	)	
	)	
Local Number Portability Porting Interval and	)	WC Dkt. No. 07-244
Validation Requirements	)	
	)	CC Dkt. No. 95-116
Telephone Number Portability	)	
	)	

**REPLY COMMENTS OF CBeyond, INTEGRA,  
ONE COMMUNICATIONS AND TW TELECOM**

Cbeyond, Inc., Integra Telecom, Inc., One Communications Corp. and tw telecom inc. (collectively, “Joint Commenters”), by their attorneys, hereby file these reply comments in response to the Further Notice of Proposed Rulemaking in the above-referenced dockets.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

As the Joint Commenters explained in their initial comments, the FCC’s review of its number portability rules should be informed by two basic principles. *First*, the FCC should limit the definition of “simple” ports to those ports that involve only the activity of porting a number. Ports that require coordination between carriers, require a facilities transfer or that require complex implementation of any kind should not be classified as simple. As the current simple port definition largely captures these concerns, the Joint

---

<sup>1</sup> *Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6084 (2009) (“*Order and FNPRM*”).

Commenters, among others, do not agree that a substantial change or expansion in the definition is warranted.<sup>2</sup>

If the definition of simple ports is materially expanded to include ports currently classified as non-simple, several harmful consequences will follow: (1) porting errors will almost certainly increase, likely resulting in end user loss of dialtone, including loss of access to 911; (2) carriers would face a substantially increased burden beyond the already substantial costs and time necessary to implement the “one-day” porting interval for those ports that are classified as simple under the current definition, forcing carriers to request waivers from the rules; and (3) the efforts of the LNPA WG and NANC to implement the one-day porting rules would be disrupted because the LNPA WG and NANC have been implementing the one-day porting processes based on the current definition of a simple port and the LNPA WG would have to make drastic changes to these processes to accommodate any revisions to the simple port definition. In all events, the FCC should not make any substantial changes to the simple port definition until the industry and the FCC have gained experience with the one-day rule under the *current definition* of simple ports. No commenter has provided a basis for departing from the current definition of simple ports.

*Second*, the FCC should allow industry standards-setting groups (e.g., ATIS) to define and standardize the process flows, forms, ordering field requirements and response

---

<sup>2</sup> See XO Comments at 2-3 (“If the Commission believes that clarification is necessary to avoid any confusion in the industry, it should narrowly tailor any clarification or modification to maintain the intent of the current rule, which is to exclude ports from expedited treatment when they need more complicated and time-consuming processing by either the old service provider or the new service provider.”). Unless otherwise noted, all citations to comments herein refer to comments filed in WC Dkt. No. 07-244 & CC Dkt. No. 95-116 on or around August 3, 2009.

fields<sup>3</sup> necessary to effectuate a port. These standards are crucial towards helping reduce the burden on carriers implementing the one-day requirement for simple ports. Once the industry standards have been agreed upon by the appropriate standards setting organization(s), the FCC must ratify the standards and make compliance by the industry mandatory. Virtually all commenters in this proceeding agreed with this basic procedural approach to developing and implementing porting requirements.

## **II. THERE IS NO BASIS IN THE RECORD FOR ALTERING THE DEFINITION OF SIMPLE PORTS.**

As the Joint Commenters and others explained in their initial comments, the definition of simple ports should be largely maintained.<sup>4</sup> *First*, the FCC should be careful not to expand the definition of simple-ports before carriers and the FCC have had the chance to analyze fully the impact of the one-day porting rule. That assessment cannot be completed until several months after the one-day porting requirement as it applies to the current definition of simple ports takes effect; either nine or 15 months after the NANC submits its porting flows to the FCC. *See Order and FNPRM* ¶¶ 11-12. For example, after going through the implementation process, carriers may well determine that they must increase their port processing staff and capabilities in unexpected ways.

---

<sup>3</sup> The “responses” that are being addressed by ATIS are Firm Order Confirmation (FOC), Reject/Error, Jeopardy and Completion. NANC plans to incorporate ATIS’s proposal into the package that NANC sends to the FCC pursuant to the porting order. Due to the limited timeframe provided by the FCC’s order and the huge disparity between the response codes, the codes will not be standardized at this time. However, the OBF is standardizing the response fields that will be returned for each type of message as part of the current standardization effort.

<sup>4</sup> *See* XO Comments at 2 (“Therefore, the Commission should not substantively change its definition of simple ports....”).

The FCC should monitor the implementation carefully before it considers expanding the scope of ports that fall within the “simple” definition.

*Second*, parties who seek to expand the definition of simple ports generally fail to take into consideration all of the variables and difficulties that may arise in the porting process when features, services or facilities not currently encompassed by the definition of simple ports are implicated by a port request. For example, some advocates of expanding the scope of ports that are classified as simple argue that it is possible to exempt from the one-day requirement the specific circumstances in which services or features on a loop (*e.g.*, AIN services) make it more difficult for the old service provider (“OSP”) and new service provider (“NSP”) to coordinate and execute a port within one business day. However, these advocates understate the complexity of the problem. Identifying clear cut and easily administrable definitions of circumstances in which the one-day rule does not apply today but could be applied easily in the future requires careful study and should not be rushed.

This is not to say that the FCC cannot or should not modify the simple port definition. If the FCC can make a bright line determination that the involvement of a particular feature, service or facility would *virtually never* make the porting process more complicated or require coordination between carriers<sup>5</sup> the FCC can appropriately expand the definition of a simple port. However, if the FCC cannot make such a determination

---

<sup>5</sup> As the Joint Commenters explained in their initial comments, the fact a CLEC might use UNE transport between two wire centers off which it serves multiple end users, does not make ports to or from such end-users non-simple. The presence of unbundled transport does not make the port more difficult or require additional coordination. Therefore, for purposes of determining the effect of UNEs on the classification of a port as simple or non-simple, the FCC could sensibly clarify that only the installation of, or conversion of a UNE loop serving the end user would make a port non-simple.

(e.g., the presence of AIN services), the FCC should not expand the simple port definition in that instance.

**A. Ports Involving “UNEs”**

In their comments, the RBOCs continue to make their self-interested argument that a port from an incumbent LEC to a CLEC that relies on an incumbent LEC UNE DS0<sup>6</sup> loop to serve its customer should be considered non-simple, while a port of the same telephone number served by the same UNE loop back to an incumbent LEC should be considered simple.<sup>7</sup> The RBOCs’ proposal should be rejected for at least two separate reasons.

*First*, as Joint Commenters explained in their initial comments, the original purpose of classifying a port that “involves a UNE” as non-simple was to take into account the substantial effort that must be undertaken to port a number *as well as to transfer* the UNE loop facility.<sup>8</sup> Contrary to the assertions of the RBOCs in their initial comments, these efforts must be undertaken when a UNE loop is converted from the incumbent LEC to a CLEC as part of the porting process *and* when the UNE loop is converted back to the incumbent LEC as part of the porting process. It is simply impossible to ensure that these processes can be reliably accomplished within a single

---

<sup>6</sup> This discussion is relevant only to the transfer of a single number off a DS0 loop. For the reasons explained below and in the Joint Commenters’ initial comments, the transfer of the numbers on a UNE DS1 or DS3 would be considered non-simple because of the presence of “complex switch translations” and/or the “single line/single account” definition.

<sup>7</sup> See Qwest Comments at 6-7; Verizon Comments at 3; AT&T Comments at 4.

<sup>8</sup> The combined activity of transferring a facility and porting the number is often referred to as a conversion of services.

day in all cases. For this reason, the ports involving conversion must continue to be considered non-simple.

For example, when a conversion is undertaken, the existing loop facility must be removed from the current provider's Connecting Facility Assignment (CFA) location and connected to the new provider's CFA for the end user in question. This activity must take place in coordination with the port of the telephone number in NPAC in order to minimize the potential end user out-of-service conditions. These tasks are in addition to the triggers and translations that must be set/removed by the OSP in a timely manner during a simple number port.

Coordinating the port with the transfer of UNE facilities back to the incumbent LEC so that both occur simultaneously is crucial to avoiding customer disruption in almost all instances.<sup>9</sup> If the facilities are converted *after* the number port has occurred, there is a substantial risk that the customer would lose dial-tone and E911 access. If the number is ported one day after the port request is made, but the facility is not transferred until several days later, the ILEC will not have access to the facility and the customer will not receive service during the several day period between the number port and the UNE facility cutover.

*Second*, even if it were technically feasible to perform a conversion back to the incumbent LEC within one day, the FCC should not adopt a single-day interval for such ports because it would place CLECs at a competitive disadvantage. Ports to the CLEC

---

<sup>9</sup> In the majority of cases, once an incumbent LEC wins back a customer from a CLEC that served the customer via a DS0 UNE loop, the incumbent LEC must reuse that copper loop to provide service to its new customer. *See* XO Comments at 3 ("In this case, an ILEC, as the new service provider, may intend to reuse the loop that is currently serving the customer via a UNE by the old service provider....").



from the incumbent LEC would be processed much more slowly (by several days in most cases) than ports from the CLEC to the incumbent LEC. Different intervals would give customers the false impression that the incumbent's service is of a higher quality than the competitor's service. Moreover, in those cases where the number is ported from a CLEC providing service over a UNE to a cable company, wireless carrier or any other facilities-based provider, the incumbent LEC must expeditiously convert the UNE facility back to the incumbent LEC upon the CLECs' request so that the CLEC is not billed for a UNE that it no longer needs. Indeed, if the incumbent LECs believe the UNE facility can be sent back to the incumbent LEC in one day in those cases where the number is ported back the incumbent LEC, the incumbent LECs should be held to the same standard in those cases where it does not win-back the customer and the number is ported to a non-incumbent LEC facilities-based provider.

#### **B. Ports Involving Complex Switch Translations**

As the Joint Commenters explained in their initial comments, the current definition of "complex switch translations" should be maintained because the presence of such translations often makes it more difficult to effectuate the number port and to prevent loss of service to the customer during the porting process. To prevent the loss of service or features, NSPs and OSPs must coordinate their actions and perform time-consuming back-office reconfigurations when "complex switch translations" are present. It is therefore unsurprising that several carriers, including Verizon, agreed that the current "complex switch translations" definition should be preserved.<sup>10</sup>

---

<sup>10</sup> See Verizon Comments at 3; *see also* XO Comments at 3 ("The Commission should also maintain that ports of accounts with multiple lines or telephone numbers and ports involving services including complex switch translations are not simple ports.").

Proposals to narrow that definition should be rejected because they do not take into account those instances where a particular service or feature makes the porting process difficult and time consuming. For example, AT&T asserted that AIN services should be eliminated from the “complex switch translation” definition because the presence of AIN services on a line does not affect the porting process.<sup>11</sup> But this is not the case in some (possibly most) instances.<sup>12</sup> One Communications has recently been involved with several orders porting individual numbers from an account with AIN services on each number and was forced to spend substantial time working with the incumbent LEC involved to address issues regarding calls that were not being delivered appropriately to the end user. Resolution required reconfiguring the incumbent LEC’s translations and the customer’s account to ensure that the remaining, unported numbers, as well as the number(s) ported to One Communications, work properly. While it may be the case that certain AIN services in *certain* circumstances with *certain* circuit configurations do not cause difficulties in the porting process, this is not the case in many instances.

Accordingly, the FCC must closely examine proposals to change the definition of complex translations in light of real world industry experience. In those cases where bright-lines between services and features that do and do not add time and complexity to

---

T-Mobile Comments at 6 (where, while arguing that simple ports should include ports of lines that contain CLASS services and custom calling features in some cases, T-Mobile also acknowledged that large enterprise customer ports often “require special and non-automated coordination”).

<sup>11</sup> See AT&T Comments at 4-5.

<sup>12</sup> However, AT&T did agree with the Joint Commenters that number ports off of lines with “hunt feature[s]” must be considered non-simple. See *id.* at n.8.

the porting process cannot be sensibly drawn, the FCC must continue to categorize such features and services as complex switch translations to ensure that carriers are given sufficient time to complete the porting process.

For similar reasons, the FCC should decline to adopt the “complex switch translation” definition currently being considered by the LNPA WG. That definition would state that “complex switch translations” may not, *in certain circumstances*, make a port non-simple. If adopted, this definition would only confuse matters by blurring the lines between when a port should be considered simple or non-simple, making the porting process more difficult to manage.

### **C. Single Line/Single Account**

As the Joint Commenters explained in their initial comments, the most reasonable interpretation of a “single” line in the FCC’s current single line/single account simple port definition is that a “single line” means a single telephone number. As Verizon argued in its comments, simple ports should “involve an end-user account only for a single telephone number[.]”<sup>13</sup>

There was widespread agreement among the commenters that the porting of multiple lines/services produce complexities that slow down the porting process. *First*, any ports that involve one or more numbers off of a facility that carries multiple numbers (e.g., single or multiple numbers off of a DS1 or DS3 loop) should be considered non-simple. A port of one or multiple numbers off of or to a DS1 or DS3 line almost always

---

<sup>13</sup> Verizon Comments at 3.

implicates “complex switch translations.”<sup>14</sup> The need for additional time is also necessary because an error in porting a single number off of a DS1 or DS3 can result in the customer losing phone and/or broadband service over the DS1 or DS3.

*Second*, ports involving multiple numbers off of a single account not served by a DS1, DS3 or other channelized facility should be considered non-simple in almost every case.<sup>15</sup> This is because (1) such ports often involve complex switch translations or hunting and (2) even in those cases where they do not involve translations or hunting, the carrier must spend time and effort determining that this is the case, making it difficult, if not impossible, to complete the porting process in a single day.

To the extent that the FCC believes that it is necessary to clarify the single line/single account definition, Verizon’s proposal provides a helpful starting point. Verizon argued that, “while non-single line ports should continue to fall outside the definition of a simple port, ports that otherwise meet the definition of a simple port<sup>16</sup>, but involve 2-19 lines, should not have an indefinite time to complete...As a result, the Commission should mandate a four business day interval for those ports.”<sup>17</sup> Under Verizon’s proposal, ports of from 2-19 lines that do not involve “complex switch translations,” “UNEs” or any other “complicating” factors under the current non-simple

---

<sup>14</sup> XO asserted that it takes additional processing time to port multiple lines in a coordinated fashion and remove complex switch translations from the line. *See* XO Comments at 3.

<sup>15</sup> CenturyLink argued that the presence of multiple lines on the account “may require additional logic and information in order for an LNP request to be processed properly and effectively.” CenturyLink Comments at 4.

<sup>16</sup> For example, porting four lines with Centrex features attached would not fall under Verizon’s proposal.

<sup>17</sup> Verizon Comments at 3.

port definition would be accomplished within four days. This seems to be a sensible proposal that is worth further study by the FCC. However, Verizon's proposal does not seem to include a proposed time period for ports that involve two or more lines but that may be considered non-simple for other reasons. Some of these ports may be practically accomplished within four days, while others may take much longer depending upon the features and services at issue. The FCC should not set a time period for such ports at this time because there is insufficient information on the record to make bright line determinations regarding time periods for such ports.

### **III. STANDARDIZATION OF PORTING FIELDS AND ORDERS**

There is widespread acknowledgement among the commenters that the four "verification" fields currently permitted for simple ports are not sufficient to effectuate a port and that additional fields must be transmitted between carriers.<sup>18</sup> It is clear that carriers must exchange more information to ensure that ports are accomplished correctly and in a timely manner, with no harm to the end user. In addition, the commenters generally agreed that the forms, fields and responses necessary to effectuate a port should be standardized. Many commenters also agreed that this task should be undertaken not by the FCC, but by the relevant standards setting organizations.<sup>19</sup> Indeed, ATIS noted that it will soon complete its work on the standardization process<sup>20</sup> and, as many

---

<sup>18</sup> As discussed in the following section, however, one of the permitted four fields, passcodes, is not necessary to effectuate a port and, in fact, has been used by some carriers to prevent or delay efficient processing of port requests.

<sup>19</sup> See e.g., Qwest Comments at 2.

<sup>20</sup> As ATIS noted, it is far along in the standardization process: "While its recommendation has not yet been finalized, ATIS OBF expects to complete its work identifying a standard set of fields needed to accomplish a simple port request in the near future. ATIS OBF plans to submit its final recommendation and findings to the LNPA

commenters argued, the FCC should ratify the standards once they are complete.<sup>21</sup> Moreover, as the Joint Commenters argued, the standards should not be “optional,” as past experience has shown that mandatory compliance with standards is necessary to avoid confusion and porting delays. Standardized fields, forms and responses for simple ports are crucial to ensuring that carriers are able to cope with the burden of the one day porting requirement for such ports.

#### **IV. ADDITIONAL ISSUES RAISED BY COMMENTERS**

Commenters raised issues that were not addressed by the Joint Commenters in their initial set of comments. These issues are addressed below.

##### **A. Use of Passcodes to Verify the Port**

The Joint Commenters agree with the many commenters that assert that permitting carriers to use passcodes to “verify” a port<sup>22</sup> has substantially hindered the porting process<sup>23</sup> and such a requirement should be eliminated. However, if OSPs continue to be allowed to verify ports based on passcodes, the Joint Commenters agree that carriers should only be allowed to do so for passcodes that (1) the end user customer requested during the period that it subscribed the OSP’s service for the purpose of

---

WG for inclusion in the NANC’s report to the FCC pursuant to” the FCC’s porting order. ATIS Comments at 4.

<sup>21</sup> See e.g., XO Comments at 6.

<sup>22</sup> *Telephone Number Portability Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval et al.*, Report and Order, Declaratory Ruling, Order On Remand And Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 48 (2008).

<sup>23</sup> For example, Vonage argued that there was strong industry agreement regarding the difficulties created by the passcode verification requirement and noted that the LNPA WG has agreed in its Best Practices document that passcodes are not necessary to validate a port. See Vonage Comments at 10.

limiting or preventing activity and changes to the their account and (2) are not a CPNI pin or password. In many instances, passcodes are assigned by the OSP to a customer without the customer's knowledge.<sup>24</sup> If neither the customer nor the NSP can determine the passcode, the OSP will reject the port request and the customer must interact with the OSP to obtain or reset the passcode, thereby delaying the switch over to the customer's preferred carrier.<sup>25</sup> In addition, as Vonage and the Nebraska PSC observed, the OSP can use this opportunity to engage in what may be unlawful retention marketing.<sup>26</sup> To prevent these harms, the FCC should either eliminate passcodes as a verification field or permit OSPs to request verification of passcodes subject to the two conditions above.

**B. Deleting the Number from the Switch and Timing of the Port**

The Joint Commenters agree with Sprint's<sup>27</sup> proposal that, in line with industry best practices, the OSP should not be permitted to remove the number from the switch until the NSP activates the port. The OSP should wait to receive the NPAC "activation" message in a reasonable amount of time (e.g., 3 business days) or the OSP may cancel the order. The Joint Commenters request that the FCC instruct the NANC to update the number portability flows to include this requirement.

---

<sup>24</sup> See Comcast Comments at 7 (noting Windstream's practice of assigning passcodes).

<sup>25</sup> See Vonage Comments at 9-11.

<sup>26</sup> See Nebraska PSC Comments at 5; Vonage Comments at 9-10.

<sup>27</sup> See Sprint Comments at 8.

### **C. CSR Timeframes**

The Joint Commenters agree with Verizon that CSRs should be returned within 24 hours.<sup>28</sup> Indeed, the CSR sub team of the LNPA WG recently came to a consensus on a 24 hour CSR interval, excluding weekends and Old Service Provider holidays, unless otherwise negotiated between service providers. This is an appropriate requirement.

### **D. Delivering Firm Order Confirmations (“FOCs”)**

The Joint Commenters do not agree with AT&T’s proposal that FOC responses should be e-mailed back to the requesting carrier instead of posted on the porting-out carriers’ website/electronic ordering portal, as is sometimes the case today.<sup>29</sup> Indeed, neither AT&T nor Verizon transmits e-mail FOC notifications for orders entered via its own electronic ordering portal.

### **E. Shortening the Wireline Porting Period**

MetroPCS’s proposal to shorten the wireline porting interval to the 2.5 hour wireless interval should be rejected.<sup>30</sup> MetroPCS has not even attempted to show how such a porting period is either technically or economically feasible.

### **F. Port Delays Due to Pending Orders**

The FCC should reject Vonage’s proposal to require that all OSPs receiving a port order terminate all pending service requests (e.g., a customer’s request that the OSP add a service that might be considered a “complex switch translation”) and port the number.<sup>31</sup>

As explained above, there are many situations in which services on the line can slow or

---

<sup>28</sup> See Verizon Comments at 5.

<sup>29</sup> See AT&T Comments at 9.

<sup>30</sup> See MetroPCS Comments at 8.

<sup>31</sup> See Vonage Comments at 4-5.



complicate the porting process and that require coordination between the OSP and the NSP to ensure that a customer's service is not interrupted. While it may be appropriate in *some cases* to port numbers while orders are pending with the OSP, Vonage's proposal is overbroad and will cause substantial service problems if implemented.

#### **G. Porting After Disconnection**

Vonage's proposal to permit ports of disconnected numbers must be rejected.<sup>32</sup> Once disconnected, numbers are returned to the NPA/NXX Code Holder, returned to the Block Holder, aged, intercepted to another telephone number or provided to a new customer, making it impossible for the OSP to reclaim/obtain the number in many circumstances.

#### **H. Authority of LNPA WG**

The Joint Commenters agree with XO that the LNPA WG is acting outside of the scope of its authority by pursuing changes to the non-simple porting process.<sup>33</sup> It is important that the FCC clarify that the LNPA WG and NANC may not adopt standards and impose those standards on the industry when those standards fall outside of the scope of authority granted by the specific FCC order in question.<sup>34</sup> In this case, NANC was

---

<sup>32</sup> See *id.* at 5-6.

<sup>33</sup> See XO Comments at 6 ("LNPA Working Group is currently considering changes to the porting process flows that would require carriers to respond to certain *nonsimple* port requests within four hours, which is clearly not required by the Commission's rules nor mentioned in the *Porting Interval Order*." (emphasis in original)).

<sup>34</sup> See *e.g., id.* at 7 ("There is no demonstrated need for a change to the non-simple port process, and it is not properly before the NANC (or any of its working groups) to make changes to the non-simple porting intervals (either the LSR/FOC exchange or completion of the port itself) in its implementation of the *Porting Interval Order*. Thus, the Commission should make clear that porting carriers are not required to change the timeframes in which they process non-simple ports based on an implementation of the one-business-day interval for simple ports.

charged with implementing a one day porting process for simple ports.<sup>35</sup> As explained above, this process will become binding on carriers either nine or 15 months (depending on the carrier's size) after they are adopted by NANC. If the NANC were to adopt standards that fall outside of this mandate, they may not be imposed on the industry unless the FCC so requires after notice and comment.<sup>36</sup> Furthermore, the Joint Commenters agree with XO that the LNPA WG should ensure that its decision-making process generally remains open and transparent as many in the industry have recently

---

<sup>35</sup> See *Report and FNPRM* ¶ 10 (“We leave it to the industry to work through the mechanics of this new interval. In particular, we direct the NANC to develop new LNP provisioning process flows that take into account this shortened porting interval. In developing these flows, the NANC must address how a ‘business day’ should be construed for purposes of the porting interval, and generally how the porting time should be measured. The NANC must submit these flows to the Commission no later than 90 days after the effective date of this Order.”).

<sup>36</sup> Under the Administrative Procedure Act (“APA”), notice and opportunity for comment are required before an agency adopts any substantive rule. Agencies -- or entities delegated authority by an agency -- may bypass this requirement only in narrow circumstances when issuing interpretative or procedural rules. 5 U.S.C. § 553(b)-(c). See *Southwestern Bell Telephone Company Application for Review of Memorandum Opinion and Order Concerning the Proper Treatment of Affiliate Transactions*, Order on Review, 12 FCC Rcd 2697 ¶ 1, n.3 (1997) (“Pursuant to the APA, all changes to the Commission's rules must be preceded by notice to all parties subject to the proposed change. In addition, all interested parties must be given an opportunity to participate in the rulemaking proceeding.”). See also *Federal-State Joint Board on Universal Service Request for Review of Decision of the Universal Service Administrator by Global Crossing Bandwidth, Inc.*, Order, DA 09-1821 ¶ 15 (rel. Aug. 17, 2009) (finding that an entity acting on delegated authority did not exceed its authority because it had not adopted a new rule without notice and comment procedures); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 19 FCC Rcd 12224 ¶¶ 41-42 (2004) (holding that the National Exchange Carrier Association had not exceeded its authority because it acted consistent with the “most current pronouncement” of FCC policy); *Federal-State Joint Board on Universal Service*, Twenty-First Order on Reconsideration, 15 FCC Rcd. 12050 ¶¶ 6, 12 (2000) (holding that the Common Carrier Bureau would have exceeded its delegated authority and violated the notice and comment requirements of the APA if it had adopted a new substantive rule, as opposed to implementing and clarifying an existing FCC rule).

questioned whether recent “consensus” decisions reached by the LNPA WG have in fact been supported by anything approaching an actual consensus.<sup>37</sup>

**I. Charging for Port-Outs**

The Joint Commenters agree with Sprint that the FCC should clarify that OSPs are not permitted to charge NSPs for porting.<sup>38</sup> In Joint Commenters’ experience, certain OSPs have attempted to charge up to \$50 to execute a port. This is a clear violation of the rules, and the FCC should reiterate that such charges are not permitted.

**J. Requirement Need to Have an Interconnection or Other Agreement Prior to Porting**

There are many situations in which incumbent LECs demand that CLECs, including the Joint Commenters, sign either interconnection or other agreements (e.g., “trading agreements”) as a condition of executing porting requests. This is a classic ploy to raise rivals’ costs since establishing interconnection agreements with every carrier with which a CLEC must port numbers would impose substantial costs and delays on the competitor. Accordingly, the Joint Commenters agree with Sprint that the FCC should reaffirm that carriers may not be forced to sign a interconnection or any other agreements as a prerequisite for porting numbers to a particular carrier.<sup>39</sup> However, it would be reasonable for the FCC to mandate that carriers provide their particular porting procedures to NSPs upon request.

---

<sup>37</sup> See XO Comments at n.7 (noting that “[t]he LNPA Working Group continues to move forward with considering [changes to the porting interval for non-simple ports] despite intense objections from an overwhelming majority of the CLEC industry and in contrast to what we understand as consensus formation.”).

<sup>38</sup> See Sprint Nextel Comments at 9.

<sup>39</sup> See *id.* at 11-13.

**V. CONCLUSION**

The Commission should adopt number portability rules consistent with the discussion herein.

Respectfully submitted,

/s/

Thomas Jones

Jonathan Lechter

Willkie Farr & Gallagher LLP

1875 K Street, N.W.

Washington, D.C. 20006

(202) 303-1000

Attorneys for Cbeyond, Inc., Integra  
Telecom, Inc., One Communications Corp.  
and tw telecom inc.

August 31, 2009